

HOUSE BILL 2323  
By McMillan

AN ACT to amend Tennessee Code Annotated,  
Section 71-5-116, relative to claims against  
estates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-5-116 (c)(2), is amended by adding at the beginning of the subdivision the following language as a new first sentence:

At the time of the filing of an estate for probate purposes of an individual who was enrolled in TennCare at the time of their death, the personal representative of the estate shall caused to be filed with the bureau of TennCare the documentation required to determine if the bureau of TennCare is owed any funds from the estate pursuant to this chapter.

SECTION 2. Tennessee Code Annotated, Section 71-5-116, is amended by relettering the current subsection (d) as a new subsection (e) and by substituting as a new subsection (d) the following new language:

(d) For purposes of recovery of payments from an estate, as contemplated by subsection (c) and as required by section 1917(b) of the Social Security Act, and not withstanding any provision of law to the contrary, the following shall apply:

(1) "Medical assistance correctly paid" shall mean benefits paid for long term care, including nursing facility care, or care received as a result of enrollment in a home and community based services waiver program;

(2) Initiation of recovery shall commence only after the death of the recipient, or if the recipient has a surviving spouse, after the death of the surviving spouse from the estate of the surviving spouse, and only at a time

when such recipient has no surviving child who is under eighteen (18) years of age or who is blind or permanently and totally disabled, provided that the determination of blindness or disability occurred prior to the child's attainment of age eighteen (18);

(3) Recovery shall be obtained in an amount equal to the dollar for dollar expenditure for medical assistance up to either the total amount expended or the value of the recipient's estate, whichever is less;

(4) The term "estate" with respect to a deceased recipient:

(A) Shall include all real and personal property and other assets included within the recipient's estate, as defined by state probate law; and

(B) Shall include any other real and personal property and other assets in which the recipient had any legal title or interest at the instant immediately prior to the time of death to the extent of such interest, including such assets held as tenants by the entirety, joint tenants with or without a right of survivorship, tenants in common, any other interest in real or personal property, and any other real or personal property or other asset conveyed to a survivor, heir, or assign of the deceased recipient through joint tenancy, tenancy in common, survivorship, tenancy by entirety, life estate, living trust, or other arrangement;

(C) Shall include one-half the value of all assets owned or held as marital property, including real property, no matter how such real property may be titled;

(5) There shall be no offset or reduction by the state of the amount to be recovered under the provisions of this section absent proof of undue hardship;

“undue hardship,” for purposes of this section, shall mean that the sale or division of the asset will result in the destruction of the sole means of family support; and,

(6) Any claim for recovery made pursuant to this subsection or subsection (c) shall be classified with taxes having preference under the laws of this state.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.